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SENATE

REPORT
101-212

PROVIDING FOR THE USE AND DISTRIBUTION OF FUNDS AWARDED THE SEMINOLE INDIANS IN DOCKETS 73, 151, AND 73-A OF THE INDIAN CLAIMS COMMISSION

NOVEMBER 19 (legislative day, NOVEMBER 6), 1989.—Ordered to be printed

Mr. INOUYE, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1096]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1096) to provide for the use and distribution of funds awarded the Seminole Indians in dockets 73, 151, and 73-A of the Indian Claims Commission, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is an amendment in the nature of a substitute, as follows:

> That, notwithstanding any provision of the Act of October 19, 1973 (87 Stat. 466; 25 U.S.C. 1401, et seq.), or any other law, regulation, or plan promulgated pursuant thereto, the funds appropriated in satisfaction of judgments awarded to the Seminole Indians in dockets 73, 151, and 73-A of the Indian Claims Commission shall be used and distributed as provided in this Act.
>
> SEC. 2. (a) The funds appropriated with respect to the judgments awarded to the Seminole Indians in dockets 73 and 151 of the Indian Claims Commission (less attorney fees and litigation expenses), including all interest and investment income accrued thereon, are allocated hereby as follows—
>
> (1) 75.404 per centum of such funds are allocated to the Seminole Nation of Oklahoma; and
>
> (2) 24.596 per centum of such funds shall be allocated among the Seminole Tribe of Florida, the Miccosu-

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kee Tribe of Indians of Florida and the independent Seminole Indians of Florida.

(b) The funds that are required under subsection (a) of this section to be allocated among the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the independent Seminole Indians of Florida, and all of the funds appropriated with respect to the judgment awarded to the Seminole Indians in docket 73-A (less attorney fees and litigation expenses), including all interest and investment income accrued thereon, shall be allocated as follows:

(A) the Seminole Tribe of Florida, 77.20 percent;

(B) the Miccosukee Tribe of Indians of Florida, 18.16 percent; and

(C) the independent Seminole Indians of Florida (as a group), 4.64 percent.

SEC. 3. (a) A proposed plan for the use and distribution of the funds allocated to the Seminole Nation of Oklahoma under section 2 of this Act may be prepared by the governing body of the Seminole Nation of Oklahoma in consultation with the Secretary of the Interior within one hundred and eighty days of the enactment of this Act. Upon completion of such a plan, the Secretary shall submit it to the Congress without delay, together with recommendations for its approval and the reasons therefor.

(b) If plan has not been prepared by the Seminole Nation as provided in subsection (a) of this section, the Secretary, in consultation with the Seminole Nation, shall prepare and submit a plan to the Congress for approval within one hundred and eighty days of the expiration of the period referred to in subsection (a) of this section. A copy of the plan prepared by the Secretary shall be furnished to the Seminole Nation simultaneously with its submission to the Congress.

SEC. 4. (a) Any plan for the use and distribution of the funds allocated to the Seminole Nation of Oklahoma shall provide that not less than eighty (80) per centum thereof shall be set aside and programmed to serve common tribal needs, educational requirements, and such other purposes as the circumstances of the Seminole Nation of Oklahoma may determine.

(b) No per capita distribution may be made from the sum allocated to the Seminole Nation of Oklahoma, except that the investment income from not more than twenty (20) per centum of the fund may be distributed per capita from time to time in the discretion of the tribal governing authority pursuant to a distribution plan approved by the Secretary. No per capita distribution shall occur pursuant to this subsection until a roll of members of the Seminole Nation of Oklahoma born on or before and living on the date of enactment of this Act has been certified by the Secretary.

(c) The interests of minors and other legally incompetent persons who are entitled to receive any portion of such

funds as are entitled to receive any portion of such funds as are subsequently distributed to them will be protected and preserved: *Provided,* That such funds may be disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the minor or legal incompetent's health, education, welfare, or emergencies under a plan or plans approved by the Secretary and the tribal governing body of the Indian tribe involved.

(d) A plan for the use and distribution of the judgment funds referred to in this Act shall be implemented by the Secretary immediately at the end of the sixty-day period (excluding days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) beginning on the day such plan is submitted to the Congress, unless during such sixty-day period a joint resolution is enacted disapproving such plan.

(e) Tribal investment decisions under a plan shall be subject to the approval of the Secretary. Approval shall be granted within a reasonable time unless the Secretary determines, in writing, that the investment would not be reasonable or prudent or would otherwise not be in accord with the provisions of this section.

(f) Neither the United States nor the Secretary shall be liable, because of the Secretary's approval of an investment decision under this section, for any losses in connection with such investment decision.

SEC. 5. The Secretary shall pay the governing body of the Seminole Tribe of Florida such portion of the amount held in trust for that tribe under section 2 of this Act to be allocated or invested as the tribal government body determines to be in the economic or social interest of the tribe within 60 days after submission of an appropriate resolution by the tribal governing body.

SEC. 6. Notwithstanding any other provision of this Act, no plan for the use and distribution of the share of the funds allocated to the Miccosukee Tribe of Indians of Florida shall be prepared or implemented and no funds allocated to the Miccosukee Tribe of Indians of Florida shall be distributed to the tribe, its members, or any other person unless such plan or distribution is duly authorized by the General Council of the Miccosukee Tribe or by a referendum vote of the members of the tribe duly called by the General Council of the tribe at which a negative vote is permitted. Such funds (and the interest therefrom) shall be held in trust by the United States and invested as provided in the Act of June 24, 1938 (52 Stat. 1037, as amended; 25 U.S.C. 162a), except that part or all of the amount may from time to time be paid to the governing body of the Miccosukee Tribe of Indians of Florida as may be authorized under this section.

SEC. 7. (a) The Secretary shall invest the funds allocated to the independent Seminole Indians of Florida (as a

group) under section 2 in accordance with subsection (a) of the first section of the Act of June 24, 1938 (52 Stat. 1037, as amended; 25 U.S.C. 162a) until the date on which the funds are distributed under subsection (c).

(b)(1) Under regulations prescribed by the Secretary, the Secretary shall compile a roll of those independent individuals of Seminole Indian lineal descent who—

(A) were born on or before, and are living on, the date of enactment of this Act, and,

(B) are listed on or are lineal descendants of persons listed on the annotated Seminole Agency Census of 1957 as independent Seminoles, and

(C) are not members of an Indian tribe recognized by the Secretary on the most recent list of such Indian tribes published in the Federal Register.

Such persons listed on this roll shall constitute the independent Seminoles referred to in this Act.

(2) All determinations in the preparation of the roll under paragraph (1) of this subsection shall be based on timely applications for inclusions on the roll supported by evidence satisfactory to the Secretary. The Secretary shall not include any person on the roll who has not made formal application in writing to be included, and who has not met the requirements of paragraph (1) (A), (B), and (C).

(c) As soon as practicable after the roll required under subsection (b) has been compiled, the funds allocated to the independent Seminole Indians of Florida (as a group) under section 2, including all interest and investment income accrued thereon to the date of payment, except as provided for in subsection (d), shall be distributed on a per capita basis, in payments as equal as possible, only to those independent Seminole Indians of Florida enrolled under subsection (b) who make timely application to the Secretary. The Secretary shall not distribute any funds to any Seminoles who are not on the roll prepared pursuant to subsection (b) or who do not make timely application to the Secretary.

(d) Except for the persons who make application and are included on the roll prepared pursuant to section 7(b)(1), and who make application and accept a per capita share of the distribution pursuant to subsection (c), the payment and distribution of the award in accordance with this Act shall not be construed to impair, diminish or affect in any manner any rights and claims of the independent Seminole Indians, either as a group or individually, to any lands or natural resources in the State.

SEC. 8. (a) The funds allocated pursuant to this Act are hereby declared to be held in trust by the United States for the benefit of the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the independent Seminole Indians of Florida respectively.

(b) None of the funds held in trust by the United States under this Act (including interest and investment income

accrued on such funds while such funds are held in trust by the United States), and none of the funds distributed per capita or made available under this Act for programs, shall be subject to Federal, State, or local income taxes, nor shall such funds nor their availability be considered as income or resources or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita payments in excess of $2,000, any other Federal or federally assisted program."

PURPOSE

On June 1, 1989, Senator Nickles introduced S. 1096, for himself and Senator Boren, to provide for the use and distribution of judgment funds awarded the Seminole Indians by the Indian Claims Commission in 1976 in dockets 73, 151, and 73-A. The initial judgment was in the amount of $16 million and is currently on deposit with the Department of the Treasury in an interest bearing account. This account has grown to approximately $47 million at this time. The Nickles/Boren bill, S. 1096, would divide the judgment fund on the basis of 75.404 per centum to the Seminole Nation of Oklahoma, and 24.596 per centum to the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida and the unaffiliated Seminole Indians of Florida, a division which was originally proposed by the Secretary of the Interior in 1977 in a proposed judgment fund distribution plan prepared pursuant to the Indian Judgment Fund Distribution Act of 1973 (25 U.S.C. 1401, et seq.).

On July 17, 1989, Senator Graham introduced S. 1336, for himself and Senator Mack, to provide for the use and distribution of the same Seminole Indian judgment fund. This bill would provide for a division of the fund on the basis of 50 percent to the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the independent Seminole Indians of Florida, and 50 percent to the Seminole Nation of Oklahoma.

S. 1096, as amended and reported by the Committee, is a combination of the two bills. The division of funds provided for in S. 1096 as reported corresponds with the division proposed in S. 1096 as it was introduced. Those portions of S. 1096 relating to the use and distribution of funds allocated to the Oklahoma Seminoles have been retained, with an amendment to assure use of the funds allocated for tribal program purposes. Those portions of S. 1336 relating to the use and distribution of funds allocated to the Florida Seminoles have been incorporated, with minor amendments to assure certain protections for the independent Seminoles of Florida.

BACKGROUND

The fund in question was established as a result of an award by the Indian Claims Commission in dockets 73, 151 and 73-A in 1976. This award was based on a compromise settlement between the Seminole claimants and the United States for claims arising from inadequate compensation paid the Seminoles for the cession of 23.9

million acres of land in Florida by a treaty in 1823 and 5.8 million acres of land in Florida by a treaty in 1832.

The group known as the independent Seminole Indians of Florida opposed the litigation throughout its course. This group is today known as the Traditional Seminole Nation, and is referred to in S. 1096, as reported, as the independent Seminole Indians of Florida. The Traditional Seminole group attempted to intervene in the Commission proceedings for purposes of getting the case dropped or dismissed but were denied the right to intervene. They also filed a collateral case in the United States District Court for the District of Columbia seeking an injunction to prohibit the Indian Claims Commission from consideration of the claims case. This also was lost. Ultimately judgment was entered by the Indian Claims Commission in 1976.

In 1977, acting under the authority of the Indian Judgment Fund Distribution Act (25 U.S.C. 1401 et seq.), the Department of the Interior began preparation of a "Secretarial Plan" for the use and distribution of the judgment funds awarded the Seminole Indians. This Plan ultimately proposed a division of the funds between the Florida Seminoles and the Oklahoma Seminoles on the basis of a population count resulting in a split of 24.596 per centum to the Florida Seminoles and 75.404 per centum to the Oklahoma Seminoles. Under the provisions of this Act, as enacted in 1973, such a Secretarial Plan needed only to lay before the two Houses of the Congress for 60 legislative days and in the absence of the Plan being rejected by the Congress, the Plan would go into effect. The Act, however, imposed a six month deadline for Secretarial submission following appropriation of the funds necessary to pay the judgment.

Before the Secretary submitted this Plan to the Congress, the Oklahoma delegation introduced legislation (S. 2000, 95th Cong.) to divide the funds on the basis of respective populations of the Florida and Oklahoma Seminoles. The Florida delegation introduced opposing legislation (S. 2188, 95th Cong.) which provided for a Congressional referral to the Court of Claims for a determination of a fair and just division. At the hearing on these two bills, Senator Bartlett of Oklahoma asked the Interior Department representative what would happen if Congress failed to act on the legislation. The reply was that the Secretary would then complete his proposed Distribution Plan and would submit it to Congress as provided by the Indian Judgment Fund Distribution Act. (See Hearing, Select Committee on Indian Affairs, March 2, 1978, 95th Cong., 2d Sess., pg. 57). No action was taken on either bill in the 95th Congress and the Secretary then proceeded to finalize his Distribution Plan.

The Seminole Tribe of Florida and the Traditional Seminoles brought an action in the U.S. District Court for the District of Columbia to enjoin implementation of the Secretary's Plan on two grounds: (1) the Plan was not submitted to Congress within the 180 day time period provided in the Indian Judgment Fund Distribution Act; and (2) the Act did not authorize the Secretary to divide judgment funds between competing tribal entities. In 1979 a judgment was entered affirming the right of the Secretary of the Interior to make a division of the funds between the competing entities, but enjoining implementation of the Secretarial plan on the ground

it had not been timely submitted to the Congress. The United States appealed this decision on the issue of timeliness of submission of the plan; the Seminole Tribe of Florida and the Traditional Seminoles appealed the decision on the issue of the authority of the Secretary to make decisions regarding division of funds between competing entities. The issue was resolved on the basis of a stipulated settlement in which the United States agreed that the matter should be resolved through legislation, and the Florida Seminoles dropped their appeal on the issue of Secretarial authority to make a division.

The Department of the Interior had previously sent over 60 judgment fund distribution plans to Congress under the provisions of the Indian Judgment Fund Distribution Act, not one of which had been submitted within the time frame provided under the Act. As a result of the *Seminole* case and a similar case in Oregon (*Gold* v. *Confederated Bands of the Warm Springs Indian Reservation*, 478 F. Supp. 190 (D.C. Or., 1979), the Department of the Interior sought legislation to ratify and confirm all the prior Plans. The Seminole Plan was not included in this legislation. (S.J. Res. 108, 96th Cong.; enacted as P.L. 96–194). In hearings on this Resolution the Department of the Interior identified a number of cases involving division of funds or judgment funds, distribution of which might have a potential effect on the rights of claimants. Among the cases identified that should not proceed to distribution except by Act of Congress was the *Seminole* case.

In the 97th Congress, the Indian Judgment Fund Distribution Act was amended and among the amendments was one which provided that in cases where the Secretary has to submit a Plan dividing judgment funds between two or more beneficiary entities, he must obtain the consent of the tribal governments involved to the proposed division within six months from the date funds are appropriated in satisfaction of the judgment or submit proposed legislation to the Congress. Again the record reflects that the *Seminole* case was identified as one which would require legislative action.

In the 97th Congress, legislation was again submitted by the Oklahoma and Florida delegations. (S. 1807 and S. 2140, 97th Cong.). The Select Committee on Indian Affairs deferred hearings on these bills on the basis of representations of the Florida and Oklahoma Seminoles that a compromise settlement might be achieved. It does not appear that any legislation was introduced in either the 98th Congress or 99th Congress. However, in the 100th Congress Senator Nickles (for himself and Senator Boren) again introduced legislation on behalf of the Oklahoma Seminoles. (S. 2150, 100th Cong.). There were no hearings on this legislation.

The only hearings held on this legislation prior to the 101st Congress were in the 95th Congress.

ARGUMENTS FOR THE DIFFERENT PROPOSED FUND DIVISIONS

The percentage split proposed in the Nickles/Boren bill, S. 1096, is based on respective census or population counts of the Seminole Indians of Oklahoma and Florida during the period 1906 to 1914. In 1906 the Bureau of Indian Affairs, pursuant to statute, developed a roll of the Seminole Indians of Oklahoma which numbered 2,146.

This roll, or count, was limited to persons who were "Seminole by blood", thus eliminating the Seminole Freedmen—persons associated with the Seminole Tribe who did not become members of the Tribe until 1866 following the Civil War. The injury for which the Indian Claims Commission made its award involved the taking of land in Florida in 1823.

The Florida Seminole count was developed by the Bureau of Indian Affairs following the Indian Claims Commissions award and is based on the Bureau's "reconstruction" of the Florida census of 1914. The total number of Florida Seminoles was placed at 700.

The Florida Seminoles contend that a division of funds based on population count alone is not fair to the Florida Seminoles. There are three main arguments they propound. First they argue that funds expended by the United States for acquisition of lands in the State of Oklahoma should be considered as funds for the benefit of all Seminoles, whether or not they removed to the West. Second they argue that the $16 million judgment entered by the Indian Claims Commission was reduced by the sums expended by the United States in acquiring the lands in the State of Oklahoma. Third, they argue that the funds should not be divided on the basis of comparative populations at the beginning of the 20th century but should be based on a population count closer to the time of the signing of the Treaties.

ANALYSIS

The Indian Judgment Fund Distribution Act

The Indian Judgment Fund Distribution Act of 1973 established a process for providing for use and distribution of judgment funds, including division of funds between contending entities, but it did not legislatively establish a formula or rule for such division of funds. It simply vested in the Secretary of the Interior the authority and responsibility for the development of a judgment fund distribution plan. In developing a plan, the Secretary is directed to consult with the affected tribes and hold public hearings with respect to the plan. Upon completion of this process, the Secretary is directed to submit the plan to the appropriate Committees in both Houses of Congress. In the absence of passage of a Resolution disapproving the plan, such plan becomes effective at the end of 60 legislative days. Not only did the Act not establish any fixed formula or rule for division of funds, it is clear also that it did not divest or diminish in any way the authority of the Congress to reject the Secretarial plan and develop such alternative legislation as it might deem appropriate to the case.

Precedent for division of judgment funds

There is no fixed formula or rule for division of judgment funds between contending tribal entities. Counsel for the Oklahoma Seminoles has cited at least two cases in which the Indian Claims Commission or the Claims Court has held that the proper and just manner of dividing tribal interests in a given area is by population as of the date of the cession, or an average population near that date, whichever is more reasonable under the particular circumstances. *The Blackfeet and Gros Ventre Tribes and the Assiniboine*

Tribe and Sioux Tribe as Intervenors v. *United States,* 18 Indian Claims Commission 241.

Counsel for the Seminole Tribe of Florida acknowledges that use of a population base nearest in time to the date of the injury or damage for which compensation has been awarded is the common rule by which divisions are made, but cites at least two instances in which that rule has been rejected as inappropriate to the case. *Confederated Tribes of the Colville Reservation* v. *Yakima Tribe of Indians of the Yakima Reservation,* 204 Ct. Cl. 568 (1974), and the Act of Congress providing for the division of funds awarded the Shoshone Indians. (Shoshone Tribe Distribution Fund Act of December 18, 1971, 85 Stat. 737, 25 U.S.C. 581–583, 92nd Cong., 1st Sess.). The *Colville* case departed from the standard rule for division of funds on the basis of repective populations because of differences in the acreages ceded by antecedent small tribes which had been merged by the Cession Treaty into the Yakima Nation and had been located on either the Yakima or Colville Reservations. The division in the *Shoshone* case was based on an agreement of the contending entities and was designed to provide some additional compensation to a small Shoshone group which had never received a reservation or trust land of their own.

It is clear from the testimony of both the Florida and the Oklahoma Seminoles and the authorities cited that the general rule is to divide Indian judgments on the basis of respective populations as determined nearest in time to the actual occurrence that gave rise to the claim. Deviations from this rule are the exception.

Receipt of benefits

The first argument of the Florida Seminoles is essentially as follows. The $16 million that was awarded the Seminole Indians by the Indian Claims Commission represents the difference between what the United States is supposed to have paid the Seminole Nation for 23.9 million acres ceded by Treaty in 1823 and the 5.8 million acres ceded by Treaty in 1832, and the actual value of the land at the time of these Treaties. The argument is that as a result of this Treaty and the land cession, the United States was required to appropriate money for the benefit of the Seminole Nation as a whole, or all of the Seminoles. However, these funds were expended only on behalf of those Seminoles removed to Indian Territory (Oklahoma).

The Florida Seminoles argue that when the Seminoles were removed from Florida to Indian Territory (Oklahoma), in order to provide space for the settlement of the Seminoles who relocated or were removed from Florida, the United States was required to acquire land from the Creek Indians who had previously been removed to the Indian Territory. The Florida Seminoles contend that the funds used to purchase this land constituted a benefit or were funds to which all of the Seminoles were entitled—not just those that removed to Indian Territory.

It is difficult to see how this argument can be sustained. Under the Treaties of 1823 and 1832 the Seminole Indians ceded to the United States all of their lands in the State of Florida. In Article I of the Treaty of 1832 it is provided that the Seminole Indians "agree to emigrate to the country assigned to the Creeks, west of

the Mississippi River; it being understood that an additional extent of territory, proportioned to the numbers, will be added to the Creek country* * *". There was no agreed upon amount of land that would be set aside for the Seminoles, and there was no agreed upon sum that should be expended for the acquisition of land.

It was not until 1856 that the United States actually expended any money to acquire land for the Seminoles. At that time the Creeks protested with respect to the settlement of the Seminoles on lands which had been set aside for them. In a treaty of that year, the United States agreed to expend approximately $1 million to acquire lands from the Creeks for a homeland for the Seminoles. It was intended that those Seminoles remaining in Florida would agree to move West. However, this did not occur.

Off-sets or payments on the claim

The most important element of the Florida Seminoles' argument is that the judgment entered by the Indian Claims Commission in 1976 was reduced by the value of the lands that had been acquired for the Seminoles in Oklahoma. This contention is strongly contested by the Oklahoma Seminoles.

The actual Stipulation of Judgment agreed upon by the parties and entered in the Indian Claims Commission proceedings contains the following language:

> That no offset claims are to be asserted against said judgment so entered and the United States hereby waives any and all claims for offsets which have been asserted or could have been asserted against the plaintiffs in this case under the provisions of Section 2 of the Indian Claims Commission Act.

Counsel for the Florida Seminoles does not dispute this language but argues that the amount of the award was in fact reduced by slightly over $2 million, the value of the land that was acquired by the United States for the Seminoles in Oklahoma in 1856. The Indian Claims Commission did, in fact, find that the claim for the cession of the 5.8 million acres in Florida under the 1832 Treaty was nullified by this later expenditure by the United States. The expenditure was treated as a "payment on the claim"—a term that is distinguished from an "offset" which is customarily based on what are called "gratuities".

In addition to the above finding, the Indian Claims Commission also found that the damages to which the Florida Seminole were entitled as a result of the cession of the 23.8 million acres in 1823 was approximately $12.5 million, and awarded judgment in that amount. Both sides appealed this judgment to the Court of Claims. The Claims Court did reverse the decision of the Indian Claims Commission, and remanded the case to the Indian Claims Commission for more specific findings and reasoning as to the valuation of the tracts involved in the case. (197 Ct. Cl. 350, 353 (1972)).

It was at this point that the parties agreed upon a settlement in the sum of $16 million. Counsel for the Florida Seminoles argues his opinion and belief that the sum agreed upon reflects the "payment on the claim" of $2 million. Counsel for the Oklahoma Seminoles was actually present when the $16 million figure was agreed

upon and states categorically that there was no reduction for this sum.

Under these circumstances it would appear that the burden of proof rests with the Florida Seminoles to establish that the $2 million expenditure for the purchase of lands in Oklahoma resulted in a diminishment of the amount of the judgment to which they are entitled. Given the categorical testimony of Mr. Neibell, counsel to the Oklahoma Seminoles, the speculative testimony of counsel for the Florida Seminoles, and the clear language in the Stipulation of Judgment of the Indian Claims Commission, it does not appear that the Florida Seminoles have met this burden.

Determination of relative populations

The actual injury or damage sustained by the Seminole Indians arose from a Treaty of Cession in 1823, and a second Treaty of Cession in 1832. In this instance the Secretary premised his decision on the basis of census or population counts of the Seminole Indians of Oklahoma and Florida during the period 1906 to 1914. It is not clear why these particular dates were chosen. However, it is clear that a full and complete roll of Oklahoma Seminoles was developed by the Secretary during this period for purposes of providing individual allotments of the lands of the Oklahoma Seminoles in accordance with the Allotment Act of 1906.

The number of Seminole Indians in Florida was based on a "reconstructed" census for this period. The Secretary contracted with the Seminole Tribe of Florida to assist in the development of this reconstructed census, and this led to the addition of over 100 names which were not included in his original count.

The Seminole Tribe of Florida contends that the Secretary should have used a date more close to the time of the signing of the Treaties. They acknowledge that there would be difficulties in compiling reliable population data for relevant dates in the 19th century, but contend that such data can be developed. They have provided the Committee with a letter from Dr. Harry Kerey, Jr., Professor of History at Florida Atlantic University, stating that in his opinion a "fairly accurate population figure" for the period around 1860 could be developed taking into account records of the Office of Indian Affairs and the War Department, records at the National Archives, Federal census materials, personal narratives and accounts kept by military personnel and private contractors involved with the removal process, public records in Oklahoma, Indian church records, recorded reminiscences of individual Indians, and other archival materials in the collections of various historical societies and museums in Oklahoma. Papers of prominent historians could also be consulted and might lead to additional research sources.

The Seminole Tribe of Oklahoma objects to such an undertaking, principally on the grounds of time constraints. They stress the fact that the Seminole Tribe of Florida was involved in the Secretary's reconstructed census of the Florida Seminoles and state that over 100 names were added by the Tribe to Secretary's census without contest. They assert that if an accurate record of the number of Seminoles in Florida in 1860 was developed, it would reflect an even smaller proportion of Florida Seminoles to Oklahoma Semi-

noles than the population count established by the Secretary for the period 1906 to 1914.

It is clear that any effort to develop a population count for a period nearer in time to the signing of the Treaties than that used by the Secretary would involve long and protracted research. The judgment of the Indian Claims Commission was entered in 1976. The Secretary's distribution plan was completed in 1977 and his use of a population count for the period 1906 to 1914 has been known since that time. Despite this passage of time, it does not appear that any historical research of the nature suggested by the Seminole Tribe of Florida has been conducted, and no evidence has been presented to the Committee that would establish that development of an earlier population count would significantly alter the population ratios already established by the Secretary.

OTHER CONSIDERATIONS

A group known as the Oklewaha Band of Seminole Indians, with offices in Orange Springs, Florida, has communicated with the Committee expressing an interest in the judgment fund awarded Seminole Indians in docket no. 73, 151, and 73-A. This group is not a Federally recognized tribe; its membership is unknown; its members have not previously been recorded on any BIA Agency census; and it maintained no formal or known relationship with the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, or the unaffiliated Seminole Indians of Florida throughout the long course of the litigation that resulted in the judgment award, or the litigation, administrative actions and legislation that followed the entry of the Indian Claims Commission award.

Principal members of this group have previously identified themselves to the Federal Acknowledgement Program at BIA, for purposes of seeking recognition or acknowledgement as a tribe, as the Crow Band of the Southeastern Cherokee Confederacy, the Council for the South Eastern Creeks, and most recently, the Oklewaha Band of Seminole Indians. The group was previously denied recognition as the Crow Band of the Southeastern Cherokee Confederacy, and failed to follow through on petitioning for recognition as the South Eastern Creek Tribe. The group is currently in contact with BIA in the context of developing a petition for Federal recognition as the Oklawaha Band of Seminole Indians, but this process does not appear to have proceeded beyond preliminary stages.

As a general rule, the modern day successor entities of the original tribe as it was composed at the time of the injury are held to be the beneficiaries of judgments awarded for the taking of tribal lands. The Committee expresses no opinion on the right or capacity of this group to achieve future acknowledgement or recognition as an Indian tribe. However, the Committee finds that the group should not be deemed a successor entity for purposes of participating in this judgment.

LEGISLATIVE HISTORY

S. 1096, to provide for the use and distribution of judgment funds awarded the Seminole Indians, was introduced in the Senate by Senator Nickles (for himself and Senator Boren) on June 1, 1989,

and was referred to the Select Committee on Indian Affairs for consideration. S. 1336, a bill providing for a different division of the judgment fund, was introduced in the Senate on July 17, 1989, by Senator Graham (for himself and Senator Mack). A hearing on both bills was held by the Committee on September 15, 1989. On November 14, 1989, the Select Committee on Indian Affairs, in an open business session, adopted S. 1096 and ordered the bill reported with an amendment in the future of a substitute.

Two companion bills were introduced in the House of Representatives, and were referred to the House Committee on Interior and Insular Affairs for consideration. A hearing was held on these bills on September 14, 1989. The Committee has taken no further action on these bills.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

In open business session on November 14, 1989, the Select Committee on Indian Affairs, by a unanimous vote of a quorum present, ordered the bill, S. 1096, with an amendment in the nature of a substitute, reported with the recommendation that the Senate adopt the bill as amended.

SECTION-BY-SECTION ANALYSIS

Section 1

Section 1 of the bill provides that notwithstanding the Act of October 19, 1973, (the Indian Judgment Fund Distribution Act), or any other law, regulation, or plan, the funds appropriated in satisfaction of judgments awarded the Seminole Indians by the Indian Claims Commission in dockets 73, 151 and 73-A shall be used and distributed as provided in this Act.

Section 2

Section 2(a) provides for the division of funds awarded the Seminole Indians on the basis of 75.404 per centum to the Seminole Nation of Oklahoma and 24.596 per centum to the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the independent Seminole Indians of Florida. Section 2(b) provides for a further division of the funds awarded the three Florida Seminole entities on a previously agreed upon basis.

Section 3

Section 3 provides for the development of a Plan for the use and distribution of the funds allocated to the Seminole Nation of Oklahoma, either by the Nation itself, or in the alternative, by the Secretary of the Interior.

Section 4

Section 4 provides that any plan for the use and distribution of the Seminole Nation of Oklahoma shall provide that not less than eighty (80) percent of the funds shall be set aside and programmed to serve common tribal needs. Limited per capita distribution is provided for out of income derived from the remaining 20 percent of the funds. The depressed economic status of the Nation was cited repeatedly in testimony and in meetings with the Nation. It is the

hope of the Committee that these funds will lead to substantial economic development with general benefits for the Nation as a whole.

Section 5

Section 5 provides that the Secretary shall pay the governing body of the Seminole Tribe of Florida its portion of the funds allocated to it under section 2 as the tribal governing body determines to be in the economic or social interest of the tribe within 60 days after submission of an appropriated resolution by the tribal governing body. The Committee notes that this provision is at variance with the general provisions regarding use of judgment funds under the Judgment Fund Distribution Act but believes that given the healthy economic circumstances of this Tribe, a waiver of such limitation is justified.

Section 6

Section 6 provides that no funds will be distributed to the Miccosukee Tribe of Indians of Florida unless a plan or distribution is authorized by the General Council of the Tribe or by a referendum vote.

Section 7

Subsection 7(a) provides that the Secretary shall invest the funds allocated to the independent Seminoles of Florida in accordance with the provisions of the Act of June 24, 1938 (25 U.S.C. 162a) providing for the investment of Indian trust funds. The authorization to invest these funds for the independent Seminoles of Florida "(as a group)" is not intended to imply any particular status of the independent Seminoles. The phrase is included at the request of the Department of the Interior in order to facilitate administrative efficiency in the investment and handling of these funds.

Subsection 7(b) defines those persons considered to be an independent Seminole under the provisions of this Act. There are many Indians in Florida, some of whom are no doubt of Seminole descent, but are not members of a Federally recognized tribe or entity. The independent Seminoles described in this section have long been recognized to constitute a distinct, independent Seminole entity and were listed on the annotated Seminole Agency Census of 1957.

Subsections 7(c) and (d) provide limitations on the payment of any per capita share to any independent Seminole, and further provide for the protection of rights or claims of the independent Seminoles to lands or resources within the State of Florida. The independent Seminoles of Florida do not currently have a reservation base or any trust lands, nor are there any defined rights to lands or other natural resources.

Section 8

Section 8 provides that funds allocated pursuant to this Act are trust funds, and provides that any distribution of these funds shall be treated in the same manner as funds distributed pursuant to the Indian Judgment Fund Distribution Act of 1973, as amended.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 1096, as provided by the Congressional Budget Office, is set forth below.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 15, 1989.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1096, a bill to provide for the use and distribution of funds awarded the Seminole Indian in dockets 73, 151 and 73–A of the Indian Claims Commission, as ordered reported by the Senate Select Committee on Indian Affairs, November 14, 1989. CBO estimates that enactment of this bill would result in no cost to the federal government or to state and local governments.

In 1976, the Seminole Indian Tribes of Florida and Oklahoma were awarded $16 million by the Indian Claims Commission for outstanding land claims. Since then, there has been continuing disagreement among the tribes as to how the funds should be divided, and the judgment fund has grown to $40 million. This bill would divide the money between the tribes and place some conditions on its use. S. 1096 would have no budget impact, as the funds were set aside and the budget authority and outlays associated with this payment were recorded at the time of the judgment.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marta Morgan, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1096 will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The Committee received the following report from the Department of the Interior.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, November 7, 1989.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is to provide you with our views on S. 1096 and S. 1336, "To provide for the use and distribution of funds awarded the Seminole Indians in dockets 73, 151, and 73–A of the Indian Claims Commission."

While the better solution would be for the tribes to solve the division of funds among themselves, in the absence of that occurrence, we would recommend enactment of S. 1096. We do have some concerns with portions of the bill. We have enclosed a section-by-section discussion of S. 1096 which provides suggested amendments with clarifying language that addresses our concerns.

We do not support S. 1336. We do not agree with the division of funds as presented in this bill and find relinquishment of tribal membership for a per capita payment in section 9(e) unacceptable.

The equitable solution of this judgment award has been a long standing issue between the Seminole entities of Florida and the Seminole Nation of Oklahoma. The tribal beneficiaries of this award have not been able to come to an agreement as to the division of the funds. Our position remains unchanged. We believe the most equitable solution is to base the distribution on the historical population count of each entity as determined by the Reconstructed Florida Seminole Census of 1914 and the Oklahoma Seminoles by blood in 1906, as corrected in 1914.

The Results of Research Report completed in 1977 determined that the Reconstructed Florida Seminole Census of 1914 (certified May 20, 1977) established the count of Seminole Indians living in Florida in 1914 was 700 and that the roll of Oklahoma Seminoles by blood in 1906, as corrected in 1914, numbered 2,146. Adding both figures makes a total of 2,846. The calculation of per centum based on these historical population figures determines that the Oklahoma share of the judgment funds is therefore 75.404 percent, and that of all Florida Seminoles is 24.596 percent. This division is provided for in S. 1096. The judgment funds under discussion today were appropriated more than 13 years ago and during this period, considerable amounts of time and cost have been spent by all parties involved, including the BIA.

The Seminole Indians of the State of Florida filed docket 73 on August 14, 1950, and the Seminole Nation of Oklahoma filed docket 151 on July 23, 1951. The Indian Claims Commission approved a compromise settlement and entered a final consolidated award for both dockets in the amount of $16 million on behalf "of the Seminole Nation as it existed in Florida on September 18, 1823." Funds were appropriated for the award in June 1976. The principal, with interest and investment income, accrued to about $47,112,000 as of May 1989.

On April 20, 1977, the Indian Claims Commission entered a final award in docket 73-A for $50,000 on behalf of the Florida Seminole entities only. Funds for this award were appropriated in March 1978. This principal, with interest and investment income has accrued to about $135,000.

The Bureau's Results of Research Report, prepared under the Indian Tribal Judgment Funds Use or Distribution Act of 1973 (87 Stat. 466, hereinafter referred to as the Act) identified the beneficiaries of the awards in dockets 73 and 151 as: (1) Seminole blood members of the Seminole Nation of Oklahoma; (2) the Seminole Tribe of Florida; (3) the Miccosukee Tribe of Indians of Florida; and (4) the unenrolled Seminole or Miccosukee Seminole Indians of Florida, referred to in the bills as the unaffiliated or independent Seminole Indians of Florida. The report also determined that the

Freedmen of Oklahoma were ineligible to share in the awards because their ancestors became members of the Seminole Nation in 1866, 43 years after the date of land taking in 1823.

The Assistant Secretary—Indian Affairs submitted a Secretarial Plan to the Congress on April 4, 1978, providing for the division, use, and distribution of the funds in dockets 73 and 151. However, failure to meet the 180 day deadline from the date of appropriations imposed by the Act resulted in the plan being declared null and void in unreported decisions of the U.S. Federal Court in Washington, D.C.

The Seminole Tribe of Florida has rejected the Secretary's formula for the division of these funds. The Florida Seminole contend the use of the historic population count is unfair, and suggest that financial and real property benefits previously granted the Oklahoma Seminoles should be discounted against the Seminole Nation of Oklahoma's share of the funds. The Seminoles of Florida favor a 50/50 percent division of the appropriated funds in dockets 73 and 151. This division of funds is proposed in S. 1336.

Additionally, S. 1336 provides for the distribution of the funds provided for the Seminoles of Florida in docket 73–A. The bill provides that the division of these funds be allocated by the following percentages: 77.20 percent to the Seminole Tribe of Florida; 18.16 percent to the Miccosukee Tribe of Florida; and 4.64 percent to the independent Seminole Indians as a group.

According to BIA's Seminole Agency and Eastern Area Office, there were 1,768 members of the Seminole Indian Tribe of Florida as of July 10, 1989, and approximately 500 members of the Miccosukee Tribe as of May 1988. The Branch of Acknowledgment and Research was informed that there are approximately 200 of unaffiliated Seminoles with the group that has petitioned for recognition but there may be countless other descendants. Based on these figures, the total would be 2,468. This would amount to 71.6 percent for the Seminole Nation of Florida; 20.3 percent for the Miccosukee Tribe of Florida; and 8.1 percent for the unaffiliated or independent Seminoles of Florida.

S. 1336 conforms to the wishes of the Miccosukee Tribe and the Seminole Tribe of Florida that their share of the allocated funds would not require a plan for the use or distribution of the funds. Under the provisions of the bill, the Seminole Tribe of Florida would invest their share as determined by the tribal governing body to be in the best economic and social interests of the tribe. The Miccosukee Tribe will have no plan nor any of their share of the funds disbursed unless such plans or disbursements are duly authorized by the General Council. These funds are to be held in trust by the United States and the governing body of the tribe shall be paid part of the amount from time to time.

The other concern with S. 1336 is section 9(e). Miccosukee or Seminole tribal members who are eligible for per capita payments shall have the option to relinquish their membership in favor of the per capital membership or retain their membership by authorizing their per capita share to be paid to the account of the respective tribe. Relinquishing membership in a tribe is a serious action and we fail to see the rationale for such a requirement.

In conclusion, the BIA has expended much time and effort to ensure that the sharing of the funds be equitably based on a historical population count. This has involved intense research and review of the history of the Seminole Nation in order to reconstruct the Florida Seminole Census of 1914 and the Seminoles of Oklahoma by blood count of 1906, as corrected in 1914. The findings and recommendations of the Results of Research Report were disseminated to all Seminole entities of Florida and to the Seminole Nation of Oklahoma. We base our division of the share of the judgment awards as presented in S. 1096 on the report and believe it to be the most equitable and fair division of these judgment funds.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

EDDIE F. BROWN,
Assistant Secretary.

Enclosure.

SECTION-BY-SECTION DISCUSSION OF S. 1096—DISTRIBUTION OF FUNDS AWARDED THE SEMINOLE INDIANS IN DOCKETS 73, 151 AND 73-A OF THE INDIAN CLAIMS COMMISSION

Section 1 states that irrespective of any other laws or regulations promulgated, the judgments awarded would be used and distributed as provided in this Act.

Section 2 would provide for the use and distribution of the award in dockets 73 and 151 to be allocated by the Secretary in prescribed allocations of 75.404 per centum of such funds to the Seminole Nation of Oklahoma and 24.596 per centum of such funds divided among the Seminole entities of Florida. All of the funds awarded in docket 73-A would be divided among the Seminole entities only.

We recommend specific language be considered for limiting legal expenses for what appears to be the same issue by deleting the parenthesis comma after expenses and adding "previously paid," to both subsections (a) and (b). We also recommend that this section be amended to provide the language stating that the percentages as presented are based on "historical population count" for both subsections (a) and (b) by inserting after the word "are" the words to read as follows: "based upon a historical population count and allocated hereby as follows—".

Section 3 would direct that a proposed plan for the use and distribution of funds be prepared by the governing body of the Seminole Nation of Oklahoma within 180 days of enactment of this legislation. The Secretary would then submit the plan to Congress with justifications for its approval. If the tribe does not prepare the plan within the prescribed time, the Secretary, in consultation with the tribe, would be required to prepare a plan within 180 days of the expiration of the first 180 days. The Secretary would then submit the plan to the tribe and to Congress for ap-

proval, at the same time. This section would further provide that the funds allocated to the Seminole Nation of Oklahoma may not be used or distributed until a membership roll is certified by the Secretary.

There is no need for a certified roll for the Seminole Nation of Oklahoma unless there is a per capita or dividend distribution provision in the plan to be approved by Congress.

We recommend that the plan for use and distribution of the funds be called a "Secretarial Plan" to ensure that the Secretary has final authority to make necessary modifications in the proposed plan. Such language enforces the intent of Congress, as we interpret it, in section 3(b). We also recommend that the word "approved" be used throughout the Act in lieu of "certified". Normally the tribe "certifies" their membership roll which is then presented to the Secretary for "approval".

Section 4 would provide for the division of funds allocated among the Florida entities on the basis of the respective members in each entity who are living on the date of enactment of this legislation, unless some other basis is agreed upon in consultation with the Secretary within the 180 days following enactment. Each tribe and the unaffiliated Seminoles would prepare a plan for the use and distribution of funds in consultation with the Secretary. None of the funds would be disbursed until each entity has a membership roll of members born on or before and living on the date of enactment of this legislation and certified by the Secretary.

We recommend that section 4(a) be deleted since this language would make it difficult to implement since two of the three entities involved have previously indicated opposition to acceptance of a money settlement. In addition, the language in this section would make it difficult if not impossible to determine who is eligible for the award. We recommend this section be rewritten using language specifying that the share of each entity be based on a historical population count and that the language in section 3(c) and section 4(d) which refers to the membership rolls, using the language "born on or before and living on the date of enactment of this Act" be used as this is preventive language required to clarify who is eligible for the award.

We also recommend that a time frame for submission of a proposed plan by the Seminole tribes of Florida be given the same time frame as the Seminole Nation of Oklahoma. It follows that the legislation should specify the same procedures for all entities involved.

Finally, the unaffiliated Seminoles of Florida are not a Federally recognized tribal entity with a governing body. Therefore, there will be no need for a proposed plan for the programming and distribution of the funds. For this reason, language specifying that the unaffiliated Seminoles of Florida will receive per capita payments is the only

means of distributing their share of the judgment allocations.

Section 5 would provide that the Secretary encourage programming of funds for economic development for the tribe. Any investments, use or distribution of the funds would be used for common tribal needs, educational requirements, and long-term economic and social interests of the affected tribe. Minors and incompetents who are entitled to receive any portion of allocated funds and have funds awarded them would have their interests protected and preserved. Such funds may be disbursed to parents or guardians in such amounts as necessary for the well-being of the minor or incompetent. Plans for these individuals must be approved by the Secretary and the governing body of the Indian tribe involved.

Section 5 further provides that approved plans are to be implemented 60 days from the day the plans are submitted to Congress, excluding days the Congress is not in session because of an adjournment of more than three calendar days to a day certain, unless a joint resolution is enacted disapproving the plan within this 60 day period. Tribal investments under a plan would be approved by the Secretary and if disapproved, the Secretary would notify the tribe, within a reasonable time, that the investment is not sound or not in accord with this Act.

Section 3(b)(5) of the Indian Tribal Judgment Funds Use or Distribution Act, (25 U.S.C. 1401 et seq., 87 Stat. 466) specifies that "a significant portion of such funds shall be set aside and programmed to serve common tribal needs, educational requirements, and such other purposes as the circumstances of the affected Indian tribe may justify, except not less than 20 per centum of such funds shall be so set aside and programmed." We strongly recommend that this section be redrafted to specify that no less than 20 percent of the judgment shares for each tribe be set aside for programming purposes under this legislation in the plans approved by the Secretary and submitted to the Congress.

Section 6 would provide that funds allocated pursuant to this Act are to be held in trust by the United States for the tribes and the unaffiliated Seminole Indians of Florida (including interest and investment income accrued while funds are held in trust) and that the funds made available under this legislation would be subject to the general provision in 25 U.S.C. 1407 relating to tax and income treatment of such funds. We have no objection to Section 6.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that enactment of S. 1096 will not result in any changes in existing law.

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